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## MISCELLANEOUS DOCUMENTS

Shooting Review Forms for Interviewed Personnel




# LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY o District Attorney
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April 16, 2015

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0703
L.A.S.D. File #014-15096-0286-013

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 16, 2014, fatal shooting of Eduardo Bermudez and Ricardo Lara by Los Angeles County Sheriff's Department Deputies Steven Miller, [redacted] David Vaca, and Richard Mendoza. We find that Deputies Miller, [redacted] Vaca, and Mendoza acted lawfully in self-defense, in defense of others, and in an attempt to apprehend a dangerous felon.

The District Attorney's Command Center was notified of the shooting on November 16, 2014 at approximately 5:15 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Renee Chang and District Attorney Senior Investigator [redacted] responded and was given a briefing of the circumstances and a walk-through of the scene.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by Detectives Angus Ferguson and Teri Bernstein, LASD Homicide Bureau. The voluntary statements of Deputies Miller, [redacted] Vaca, and Mendoza were considered as part of this analysis.

## FACTUAL ANALYSIS

On the evening of November 15, 2014, Eduardo Bermudez was visiting his [redacted] who lived on Verona Street in the City of Los Angeles.[1] [redacted] was having a third birthday party for her [redacted] At the party, Bermudez was drinking beer.[2] He also displayed an air gun that appeared like a real handgun to several people at the party.[3]

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[1] Bermudez previously lived with [redacted] but had recently moved to the City of Hesperia with his [redacted]

[2] [redacted] observed Bermudez drink at least five or six beers.

[3] [redacted] stated that he had ordered an "Airsoft" gun on-line and had received it on November 14, 2014.

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Ricardo Lara, a [redacted] also attended the party. At approximately 11:00 p.m., Lara left the party and returned to his residence with his [redacted] Shortly thereafter, he left his apartment to get something to eat. He entered the driver's side of his vehicle, a gray Hyundai sports utility vehicle (SUV) and Bermudez, who had left the party separately, entered into the passenger side of the SUV. They left the location.

A few hours later, on November 16, 2014, at approximately 2:20 a.m., [redacted] finished [redacted] at the [redacted] in East Los Angeles where he [redacted] As was walking to his car, he heard a noise that sounded like the movement of a slide of a firearm. He looked in the direction of the sound and observed a gray Hyundai sports utility vehicle (SUV) driving slowing next to him. Bermudez was seated in the front passenger seat and was pointing a handgun at him.[5] Bermudez was wearing a baseball hat with the word "Navy" on the front. [redacted] ran to his vehicle and called 9-1-1. He provided a description of Bermudez, the baseball hat he was wearing, and the license plate number of the SUV.[6]

Deputies Steven Miller and [redacted] responded to the call.[7] Deputies David Vaca and Richard Mendoza also responded.[8] Via their mobile digital computer, they learned that the license plate number provided by Torres belonged to a vehicle registered to Ricardo Lara at his [redacted] address. The two units drove to the address in an attempt to locate the vehicle. After approximately 15 minutes, Miller and [redacted] observed Lara's vehicle driving near Lara's residence. Lara was driving and Bermudez was in the front passenger seat. [redacted] drove their patrol vehicle behind the SUV and attempted to conduct a traffic stop. Vaca and Mendoza followed behind [redacted] and Miller.

Lara stopped the vehicle at the curb in front of his residence and Bermudez, still wearing the baseball cap emblazoned with the word "Navy," exited the front passenger door. Lara pulled forward a few feet, turned into the driveway of his apartment building, and parked his vehicle.[9] [redacted] stopped his vehicle near the curb a few car lengths behind Lara's vehicle. Mendoza continued behind the SUV and stopped his vehicle partially on the apron of the driveway, directly behind Lara's vehicle in order to block any attempt to escape.

Bermudez was standing on the sidewalk in front of Lara's apartment building, directly between [redacted] and Mendoza's patrol vehicle. Immediately, Miller commanded him to show his hands. [redacted] issued similar commands in Spanish. Bermudez did not comply and took an aggressive stance facing Miller and [redacted] Vaca and Mendoza, realizing that they were in the direct line of

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[4] The [redacted] is located approximately [redacted] from Lara's residence.
[5] [redacted] did not know Bermudez or Lara, but he believed that Bermudez had been in the bar where he worked earlier that evening.
[6] [redacted] also reported that he believed there were three individuals in the vehicle.
[7] They were partners in a marked LASD patrol vehicle. [redacted] was the driver and Miller was the passenger.
[8] They were partners in a marked LASD patrol vehicle. Mendoza was the driver and Vaca was the passenger.
[9] The apartment building had six side-by-side single car garage doors. The driveway leading to the garage doors was just deep enough for one vehicle to park in front of each door and the sidewalk.

fire from the other deputies, ran to join Miller and [redacted] behind their patrol vehicle. Bermudez reached his right hand into the front of his jacket and began shouting at the deputies in a taunting and threatening manner, "You don't know who I am" and "Just shoot me!"[10] Bermudez slurred his words and appeared to be under the influence of alcohol or drugs. Bermudez exposed the butt of a handgun from his jacket, moving it in and out of his jacket several times. The deputies ordered Bermudez to drop the gun. Bermudez still did not comply. Instead, he slowly pulled the gun completely out from his jacket. Out of fear for their safety and the safety of others, Miller, [redacted] Vaca, and Mendoza fired several rounds from their service weapons at Bermudez, striking him multiple times.[11] Lara, who had exited the driver's side of the SUV and was standing behind Bermudez in the line of fire, was struck one time in the neck.[12] Both Bermudez and Lara fell to the ground.[13] Bermudez dropped his weapon on the ground next to him.[14] Paramedics from LASD Emergency Services Detail responded to the location and pronounced Bermudez and Lara dead at the scene.

Deputy Medical Examiner Odey Ukpo, M.D. performed an autopsy on Bermudez on November 17, 2014. Bermudez suffered gunshot wounds to his neck, chest, back, left arm, and both thighs. He had a gunshot wound to his right hand.[15] Blood samples taken from Bermudez during the autopsy were analyzed and determined to have a .25% blood alcohol level. Fluoxetine and Norfluoxetine were also detected.[16] Dr. Ukpo determined the cause of death to be multiple gunshot wounds.

Deputy Medical Examiner Jeffrey Gutstadt, M.D. performed an autopsy on Lara on November 17, 2014. Lara suffered a gunshot wound to his neck. Blood samples taken from Bermudez during the autopsy were analyzed and determined to have a .20% blood alcohol level. Dr. Gutstadt determined the cause of death to be a gunshot wound to the neck.

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[10] Miller heard Bermudez shout, "Just shoot me!" [redacted] heard Bermudez shout, "What's my name?" Vaca heard Bermudez yell, "Tell me who I am!" [redacted] who was in her [redacted] was awoken by the officers shouting, "Put your hands up in the air, drop the gun!" She heard Bermudez respond, "You don't know who I am!"

[11] Miller, [redacted] Vaca, and Mendoza were each armed with a Beretta model 92FS, 9mm Luger caliber semiautomatic pistol. During the incident, Miller, [redacted] Vaca, and Mendoza fired five rounds, four rounds, two rounds, and seven rounds, respectively.

[12] Vaca and the other deputies were shouting at Lara to get out of the line of fire. Vaca attempted to use his hand to motion to Lara to move.

[13] [redacted] was asleep in her residence when she was awoken by shouts of "Get down, get down!" She looked out of her window and observed the deputies pointing their guns at Bermudez. She ran outside and observed Bermudez holding a gun. She heard the deputies continue to shout, "Get down!" Seconds later, she heard numerous gunshots from the deputies.

[14] Bermudez was armed with a Cybergun, model "Tanfoglio Witness 1911," replica air pistol. This replica looks like an actual Model 1911, semiautomatic pistol. It has a metal barrel, metal slide, and a wood colored grip. It does not have a colored plastic tip on the end of the barrel.

[15] The replica air pistol that was recovered had a bullet hole through the butt of the gun that was consistent with the injury to Bermudez' right hand.

[16] Fluoxetine (also known by the trade name of Prozac) and Norfluoxetine are used to treat depression and obsessive-compulsive disorder. According to [redacted] Bermudez was bi-polar and suffered from anxiety and depression.

## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears that the person claiming the right of self-defense or defense of others actually and reasonably believed that he was in danger of great bodily injury or death. People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Mercer (1962) 210 Cal.App.2d 153, 161.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. CALCRIM No. 3470.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 189 Cal.App.2d 575.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight….The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Conner, (1989) 490 U.S. 386, 396-397.

"[T]he doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury of an innocent bystander." People v. Mathews, (1979) 91 Cal.App.3d 1018, 1024. "A defendant is guilty of no crime if his legitimate act in self-defense results in the inadvertent death of an innocent bystander." People v. Levitt, (1984) 156 Cal.App.3d 500 (citing Mathews).

California law also permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. People v. Ceballos (1974) 12 Cal.3d 470. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. Ceballos, supra, 12 Cal.3d at 479.

## CONCLUSION

The evidence examined shows that the deputies were responding to a 9-1-1 call reporting an assault with a firearm. When Bermudez exited Lara's vehicle, he was wearing the same baseball cap that was described in the report. Bermudez immediately began behaving in an aggressive and taunting manner, shouting, "Do you know who I am?" and "Just shoot me!" When the deputies ordered him to show his hands, Bermudez did not comply. Instead, he began pulling the butt of a gun in and out of his jacket. The deputies continued to order him to drop the gun

and show his hands. Bermudez still did not comply. Instead he pulled the weapon completely out of his jacket. In reasonable fear for their lives and the lives of their fellow officers and in an attempt to apprehend an individual whom they reasonably believed to be a dangerous felon, Miller, [redacted] Vaca, and Mendoza responded with deadly force, striking Bermudez numerous times. As a result, Lara who was in the line of fire, was also struck one time.

We find that Deputies Miller, [redacted] Vaca, and Mendoza acted lawfully in self-defense, in defense of others, and in an attempt to apprehend an individual whom they reasonably believed to be a dangerous felon when they used deadly force against Eduardo Bermudez. We also find that the deputies acted lawfully in self-defense and in defense of others when they inadvertently struck Lara. Therefore, we are closing our file and will take no further action in this matter.

Very truly yours,

CONTENTS NOTED R.A. KUSCH, CAPT. 5-13-15

JACKIE LACEY
District Attorney

By [signature]
RENEE CHANG
Deputy District Attorney
(213) 974-3888

c: Deputy Steven Miller, #[redacted]
Deputy [redacted] #[redacted]
Deputy David Vaca, #[redacted]
Deputy Richard Mendoza, #[redacted]